

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Advanced Television Systems)
and Their Impact on the Existing)
Television Broadcast Service)
)
Review of Technical and)
Operational Requirements:)
Part 73-E, Television Broadcast)
Stations)
)
Reevaluation of the UHF)
Television Channel and Distance)
Separation Requirements of)
Part 73 of the Commission's Rule)

MM Docket No. 87-268

**COMMENTS OF MEDIA ACCESS PROJECT AND
TELECOMMUNICATIONS RESEARCH ACTION CENTER**

Media Access Project ("MAP")¹ and Telecommunications Research and Action Project ("TRAC")² respectfully submit these comments in response to the Commission's request for comments on its Tentative Decision and Further Notice of Inquiry on Advanced Television (FCC 88-288, released September 1, 1988).

Broadly speaking, MAP and TRAC find themselves in substantial agreement with the position articulated by over-the-air broadcasters. In general, MAP and TRAC subscribe to the consensus position articulated in the Joint Comments prepared for submission on behalf of the Association of Maximum Service

¹MAP is a non-profit public interest telecommunications law firm which represents listeners and viewers seeking to protect their First Amendment rights to receive information.

²TRAC is a national membership organization which, inter alia, promotes the First Amendment rights of its members by appearing before the FCC and the Courts.

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Telecasters, Inc., other trade associations and individual broadcasters. While this may seem anomalous to those who inaccurately misperceive the public interest community as opponents of broadcasting, this position is actually grounded in MAP and TRAC's long standing support of the current trusteeship system of broadcast regulation.

MAP and TRAC represent the interests of viewers, including those of TRAC's members, and of the public in general. In the context of this proceeding, these interests are numerous. The outcome of this proceeding may affect the timing, variety, nature and cost of video service which will be available to the public, whose right to receive information is, and continues to be, "paramount." Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969). As consumers, viewers are affected by decisions with respect to the hardware which will be required to receive video service; television receivers are a major investment for many Americans, and the price of receiving equipment is a major determinant of how, when, and which, citizens receive the benefit of any new transmission standard. More broadly, the American public is affected by public policy decisions affecting the United States' posture in international trade and the consequent impact on jobs and the general health of the American economy.

A glaring shortcoming in the Commission's proceedings to date is the virtual exclusion of the public from the process. The Commission and its staff seem to view its task as sorting among the competing interests of various industrial sectors. In

addressing a public policy matter of this magnitude, the Commission must do much more to educate the public, stimulate informed participation and help create broad-based and well-informed debate on the issue. As exemplified by its refusal to place substantial numbers of public interest, labor, minority and consumer representatives on its advisory committee, the Commission has failed utterly in this regard.

MAP and TRAC endorse most elements of the Commission's Tentative Decision. This support is based upon a strong policy preference for the trusteeship model embodied in Title III of the Communications Act of 1934, at least until such time as broadband fiber optic technologies of the next generation are universally available. MAP and TRAC believe that the United States has - by far - the best radio and television service in the world. This is not an accidental by-product of the regulatory mechanisms contained in the Communications Act, but rather is a direct consequence thereof. Use of terrestrial broadcast spectrum will provide, at least initially, for delivery of advanced television service by means of the "free" advertiser supported model in which broadcast service is provided by trustees pledged to serve the public interest. Other modalities virtually insure that advanced television will be available only on a subscription basis to persons able to pay potentially high subscription charges. Terrestrial service also permits inclusion of locally produced and locally oriented offerings on advanced television services. Insuring that service initially be available on NTSC

receivers similarly advances these goals. The public policy goal of maintaining broad and equal access to information is essential to promoting full participation in the democratic process. Dividing society into classes of the "information rich" and the "information poor" benefits no one, least of all the children who are unable to determine their own economic status.

MAP and TRAC also endorse the use of existing TV bands to provide spectrum for advanced television. It is with no small sense of irony that MAP and TRAC note the Commission's analysis and tentative conclusion that, if additional spectrum is needed for advanced television, it can be found within existing TV bands. A decade ago, when the public interest community, including MAP and TRAC, argued that numerous additional over the air "drop-in" channels could have been made available through better allocation practices, they were the object of ridicule and disdain. As this experience demonstrates, assessment of future spectrum needs is inherently speculative. Thus, while there are other parties in this proceeding who have greater resources to explore and address these engineering considerations, the Commission is urged to view such analyses from a political as well as an engineering perspective in determining what, in fact, can be done.

Whether or not it is ultimately possible to accommodate advanced television needs within existing TV bands, MAP and TRAC's support for terrestrial advanced television service on these bands is premised on what can no longer be denied - that

spectrum space is now, and will continue to be scarce.³ The historic bargain contemplated by Title III of the Communications Act - service in the public interest in exchange for free access to a scarce public resource - has worked well and should be continued in advanced television. However, to justify continued monopoly access to valuable spectrum and, most certainly, to support any claim to an additional three or six megahertz of spectrum for advanced television, broadcasters must continue to serve as trustees with respect to service to all segments of the community, including minorities and children, and to demonstrate that renewal of their licenses is in the public interest. The Commission must also promulgate and enforce regulations to insure that the advantages of monopoly licensing are not misused for predatory or other anti-competitive purposes. The need for such regulation is exacerbated to the extent that additional spectrum space is reserved for the exclusive use of existing licensees.

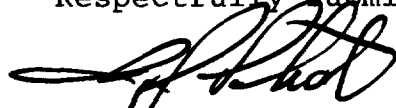
Among the further questions presented by the reservation of spectrum space for future advanced television needs is how the spectrum should be used in the interim. MAP and TRAC find particular merit in Commissioner Dennis' proposal that time limited secondary uses be permitted. However, MAP and TRAC would urge that FM or TV broadcast service be the "primary" of these

³TRAC and MAP (as well as decisive majorities of both houses of Congress) vehemently dispute the Commission's claim that there is today no longer any "numerical scarcity" of information sources. In the context of advanced television, however, there is unquestionably scarcity by any definition, and this will remain so until broadband fiber optic cable is universally available.

secondary uses. Such a reservation would be particularly well suited to services meeting the needs of emerging minority communities, and if a minority preference mechanism were developed, could give valuable broadcast experience to minorities.

Finally, MAP and TRAC strongly urge the Commission to commit itself to the establishment of industry standards for advanced television. The Commission's failure to set standards for AM stereo is widely and properly viewed by persons throughout the private and public sectors, as well as academicians and legislators, as the paradigm of the failure of the public policy process. This mistake ought not be repeated.

Respectfully submitted,



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